

APPEAL NO. 022776
FILED DECEMBER 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 2, 2002. The appellant (claimant) appeals the hearing officer's determinations that the compensable injury of _____, does not extend to and include an injury to the thoracic spine or bilateral shoulders and that the claimant had no disability from the compensable injury. The respondent (carrier) responds, urging affirmance.

The hearing officer's determinations that the carrier waived its right to dispute compensability of the claimed injury by failing to timely contest the compensability of the injury; that the claimant sustained a compensable injury (a contusion to her head) on _____; and that the compensable injury extends to and includes an injury to the cervical spine, have not been appealed and have become final pursuant to Section 410.169.

DECISION

We affirm the hearing officer's decision with clarification.

Essentially, the claimant quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The hearing officer in this case, regardless of the extent of the claimant's injury, was persuaded that the injury did not result in an inability to obtain and retain employment, and that the claimant began missing time because she was terminated.

However, we would clarify the decision in this regard: note that the hearing officer found that the carrier had waived the right to dispute "the claimed injury". While the document that purportedly served as written notice of injury is not in the record, the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) lists the original injuries to include the claimant's shoulders, even if that region was subsequently cast in this proceeding as an "extent of injury" matter. Therefore, the shoulders are part

of the compensable injury as a matter of law by virtue of the carrier's waiver of the right to dispute compensability.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order as clarified above.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge